



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: OCTOBER 22, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (WILLIAMS) *WFW*
Division OF LEGAL SERVICES (MCKINNEY) *gem MCB*

RE: DOCKET NO. 981041-TI - REQUEST FOR WAIVER OF RULE 25-24.490(2), F.A.C., BOND REQUIREMENT, BY TIME WARNER AXS OF FLORIDA, L.P., D/B/A TIME WARNER COMMUNICATIONS.

AGENDA: 11/03/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\981041.RCM

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CASE BACKGROUND

On August 18, 1998, this Commission received an application from Time Warner AXS of Florida, L.P. d/b/a Time Warner Communications (Time Warner) seeking a waiver of Rule 25-24.490(2), Florida Administrative Code. The rule requires that a company maintain on file with the Commission a bond covering its current balance of deposits and advance payments from its customers.

Time Warner's Petition for Waiver of Bond Requirement was filed on August 18, 1998. The Notice of Petition of Waiver of Bond Requirement was submitted to the Secretary of State for publication in the Florida Administrative Weekly on September 4, 1998. The comment period ended on September 18, 1998, and no comments were submitted.

The Commission has addressed several bond waiver petitions in the past, and has approved or denied them based on the financial data provided by the petitioning interexchange telecommunications

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RECORDS MANAGEMENT DIVISION

carrier. As explained below, staff recommends that Time Warner be granted the waiver from Rule 25-24.490(2), Florida Administrative Code.

DISCUSSION OF ISSUES

ISSUE 1: Should Time Warner AXS of Florida, L.P. d/b/a Time Warner Communications (Time Warner) be granted a waiver of Rule 25-24.490(2), Florida Administrative Code?

RECOMMENDATION: Yes. (McKinney)

STAFF ANALYSIS: Rule 25-24.490(2), Florida Administrative Code,, Customer Relations; Rules Incorporated, states as follows:

An interexchange company may require a deposit as a condition of service and may collect advance payments for more than one month of service if it maintains on file with the Commission a bond covering its current balance of deposits and advance payments (for more than one month's service). A company may apply to the Commission for a waiver of the bond requirement by demonstrating that it possesses the financial resources and income to provide assurance of continued operation under its certificate over the long term.

Staff believes that the company has demonstrated adequate financial resources and income to assure the longevity of its operations.

In addition to meeting the requirements of Rule 25-24.490(2), Florida Administrative Code, for waiver of the bond requirement, Time Warner's petition for waiver must also meet the requirements of Chapter 120.542, Florida Statutes. Under this statutory requirement, a petitioner requesting a waiver of a Commission rule must first demonstrate that the purpose of the underlying statute will otherwise be served if waiver of the rule is granted. Secondly, the petitioner must demonstrate that continued

enforcement of the rule would result in substantial hardship for the petitioner or violate principles of fairness.

Staff believes that Time Warner's petition meets the requirements of Chapter 120.542, Florida Statutes. First, the petitioner has demonstrated that the pro-consumer, public interest purposes of Chapter 364.03 and 364.337, Florida Statutes, underlying Rule 25-24.490(2), Florida Administrative Code, will be served if the Commission grants the waiver request. Time Warner has demonstrated that a bond is not necessary to protect consumers' interests in this situation because of its substantial financial resources and overall stability.

Secondly, the company has demonstrated that the Commission's enforcement of the bond requirement would result in substantial economic hardship for the company. Enforcement of the bond requirement would force Time Warner to invest a great amount of money in a bond and its associated expenses. Given Time Warner's financial stability and size, the posting of a bond is not necessary to protect the public interest. Accordingly, staff recommends that Time Warner's waiver petition be granted.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If no person whose substantial interests are affected by the Commission's Proposed Agency Action, files a protest within 21 days of the issuance date of the order, this docket should be closed. (McKinney)

STAFF ANALYSIS: This docket should be closed, if no person whose substantial interests are affected by the Commission's Proposed Agency Action, files a protest within 21 days of the issuance date of the order.